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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	GC DOCKET NO. 92-52
	)	
	)	
Reexamination of the Policy	)	
Statement on Comparative	)	
Broadcast Hearings	)	

To: The Commission

REPLY COMMENTS

Anchor Broadcasting Limited Partnership (Anchor), by its attorneys, now replies to the comments filed by Susan M. Bechtel (Bechtel) and Galaxy Communications, Inc. (Galaxy) on June 2, 1992.

Anchor, Bechtel and Galaxy are applicants for a new FM station at Selbyville, Delaware (MM Docket No. 87-504). The Commission issued a decision granting Anchor's application. Anchor Broadcasting Limited Partnership, 6 FCC Rcd 721 (1991). Galaxy and Bechtel appealed that decision to the United States Court of Appeals for the District of Columbia Circuit. The Court rejected Galaxy's arguments but remanded the proceeding for consideration of Bechtel's arguments. Susan M. Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992). Galaxy has filed a pending petition for writ of certiorari with the United States Supreme Court (Case No. 91-1744). The Commission has received comments from the parties concerning the issues raised by Bechtel, but has not yet acted on these comments.

Both Bechtel and Galaxy filed comments in this proceeding. Anchor deems it necessary to reply to these comments to make two points. First, any changes in the comparative criteria made in this proceeding should not and may not be applied to the Selbyville proceeding. Second, Galaxy's attempt to reargue the merits of Anchor's application must be summarily rejected.

The Commission has already specifically held that any revised criteria will not apply to any applications designated for hearing prior to the effective date of its action. NPRM, Para. 41. It specifically held:

> we will not in this proceeding treat the manner in which the comparative criteria will be applied to the Bechtel case on remand or to other pending cases already designated for hearing.

Id. at Para. 41 n.17. Bechtel's comments consist of her brief before the Court of Appeals in the Selbyville proceeding, which has no applicability to this proceeding.[1] Galaxy directly attacks the Commission's determination not to apply new criteria on a retroactive basis. Any attempt to broaden the scope of this proceeding to consider changing the comparative criteria retroactively must be rejected.

Galaxy ignores the massive disruption that would result if its position were adopted. If new criteria were applied

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[1] If Bechtel merely intended to argue that the changes she proposed in the Selbyville proceeding should be applied in future proceedings, her comments could be considered in that vein. Her specific attacks on each applicant's integration proposal in the Selbyville proceeding could not be considered, however.

retroactively, they would have to be applied to every pending case. The Commission would also have to hold additional hearings in every pending case to give applicants an opportunity to meet these new criteria. Those additional hearings would cause substantial delays in the institution of new broadcast service throughout the nation. The proceedings would also cause massive strain upon the Commission's limited resources.

Retroactive enforcement of a rule is improper if the "ill effect" of retroactive application outweighs any frustration of the interests the rule promotes. Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551, 1555, 62 RR 2d 1501, 1504 (D.C. Cir. 1987). Here, the ill effects of retroactive application would be massive. The public would encounter significant delays in obtaining new broadcast service. The Commission would have to use scarce resources to hold additional proceedings. In addition, applicants that participated in hearings under the old criteria would have their due process rights violated if new criteria were retroactively applied. These massive problems would far outweigh any benefit that could result from applying new criteria retroactively. Galaxy's generalized arguments ignore the disruption that would result from applying new criteria retroactively. Since the Commission's determination that the rulemaking proceeding will only apply prospectively is correct, no reason exists to hold the Selbyville proceeding in abeyance to await the

outcome of this rulemaking proceeding.

A second substantial problem with Galaxy's comments is that Galaxy uses its comments as an excuse to reargue the merits of Anchor's integration proposal and the award of a minority preference to Anchor. Galaxy Comments, Pp. 2-3. It is wholly improper for the applicant to reargue the merits of a specific ongoing adjudicatory proceeding in a rulemaking proceeding. Moreover, both the Commission and the Court of Appeals have already rejected Galaxy's arguments. The only proper forum for discussing the constitutionality of Anchor's minority preference award is the United States Supreme Court, where Galaxy has filed its petition for writ of certiorari. The determination that Anchor is entitled to 100 percent integration credit if integration is to be used as a comparative factor has already been made. Anchor asks that the Commission not consider Galaxy's comments to the extent they argue the merits of the Selbyville proceeding.

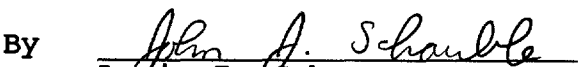
Since Anchor is filing these comments primarily to ensure that the Commission not consider or affect the merits of Anchor's applications in this proceeding, Anchor will not comment upon what changes, if any, should be made to the comparative criteria in future proceedings. Anchor's views on the comparative criteria to be used in the Selbyville proceeding are set forth in its March 30, 1992 comments in that proceeding. Those views are not relevant to this proceeding. Furthermore, since Anchor is not commenting upon

the general subject of this proceeding, it asks that it not be required to serve these reply comments upon anyone other than the parties to the Selbyville proceeding.

Accordingly, Anchor asks that the Commission abide by its determination that any changes made in this proceeding will not apply to proceedings already designated for hearing. It also asks that the Commission not consider the Bechtel and Galaxy comments to the extent they discuss the merits of MM Docket No. 87-504.

Respectfully submitted,

ANCHOR BROADCASTING LIMITED PARTNERSHIP

By 

Lewis I. Cohen
John J. Schauble
Cohen and Berfield, P.C.
1129 20th Street, NW, #507
Washington, DC 20036
(202) 466-8565

Its Attorneys

DATE: June 22, 1992

CERTIFICATE OF SERVICE

I, Brenda E. Domyan, do hereby certify that on the 22nd day of June, 1992, a copy of the foregoing "Reply Comments" was sent first-class mail, postage prepaid to the following:

John I. Riffer, Esq.*
Associate General Counsel
Federal Communications Commission
1919 M Street, NW, Room 602
Washington, DC 20554

Ronald D. Maines, Esq.
Barry D. Wood, Esq.
Jones, Waldo, Holbrook & McDonough
2300 M Street, NW - Suite 900
Washington, DC 20037

Gene A. Bechtel, Esq.
Bechtel & Cole
1901 L Street, NW, Suite 250
Washington, DC 20036

Brenda E. Domyan